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Letter dated 10 April 2007 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Uruguay submitted pursuant to paragraph 6 of resolution 1373 (2001), as well as the response of Uruguay to resolution 1624 (2005) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ricardo Alberto **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 13 March 2007 from the Permanent Representative of Uruguay to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

I have the honour to write to you in your capacity as Chairman of the Counter-Terrorism Committee (CTC) in reference to the note from the Permanent Mission of Uruguay to the United Nations, dated 21 April 2006, in order to transmit a document containing the replies of the Government of Uruguay to the additional questions concerning Security Council resolutions 1373 and 1624, as a supplement to the fourth report submitted in a timely manner by Uruguay (see enclosure).

(*Signed*) Elbio **Rosselli**
Ambassador
Permanent Representative

Enclosure*

Uruguay

1. Resolution 1373 (2001)

1.1 Uruguayan legislation does not contain a specific offence entitled "terrorism"; rather, by means of article 14 of Act No. 17,835, it characterizes the terrorist nature of various offences, deriving from the purpose for which they are conducted. In such cases, i.e., when an offence is committed for the purpose set forth in article 14, article 15 of the Act increases the penalty established by law for the offence in question.

1.2 Over the past year, as part of a determined strategy to combat money-laundering and the financing of terrorism, efforts began to strengthen Uruguay's Information and Financial Analysis Unit (UIAF); they included the appointment of a professional with extensive experience in the area as its head and the strengthening of its role within the Central Bank of Uruguay, in the context of a proposed new constitution currently being discussed in Parliament.

However, it is felt that UIAF does not yet have all the human and material resources it needs to perform its tasks fully and efficiently.

Owing to the importance of the issue, at a recent meeting between representatives of the Office of the President of the Republic — in their capacity as political leaders responsible for the prevention and control of money-laundering and the financing of terrorism in Uruguay — and the Board of Directors of the Central Bank of Uruguay agreement was reached on an ambitious plan for strengthening the resources allocated to UIAF, to be implemented in the short term, with the expectation that the problem would be resolved during the course of 2007.

At the same time, in coordination with the Inter-American Drug Abuse Control Commission of the Organization of American States, the process of selecting and implementing software for improving the system for reception and follow-up of suspicious transactions reports (STRs) has begun.

1.3 To date, UIAF has not signed a memorandum of understanding with its counterparts in other States. However, negotiations are currently being conducted on the signing of memorandums of understanding with the following countries: Argentina, Brazil, Mexico, Paraguay and Spain.

1.4 (a) Number of STRs received since the establishment of UIAF:

2001-2
2002-6
2003-13
2004-11
2005-42
2006-26

(b) UIAF referred four cases to the Uruguayan criminal justice system, concerning which no judgements have been issued.

* Annexes are on file with the Secretariat and are available for consultation.

(c) The obligation to report suspicious transactions was initially established by a decision of the Board of Directors of the Central Bank of Uruguay dated 20 December 2000 (communicated in Circular No. 1722 of 21 December 2001). Act No. 17,835 of 23 September 2004 was subsequently adopted, articles 1 and 2 of which refer to the reporting obligation and establish nine entities bound by the obligation.

1.5 As stated in the preceding reply, article 2 of Act No. 17,835 establishes a reporting obligation for certain non-financial entities. The relevant portion reads as follows:

> "*Article 2*. The following shall also be subject to the obligation set forth in the preceding article: casinos, enterprises providing money transfer or remittance services, real estate agencies, natural or legal persons engaging in the purchase and sale of antiques, art works and precious metals, and natural or legal persons which, on behalf of and for third parties, engage in financial transactions or regularly administer corporate entities when the latter do not constitute a consortium or economic group.
>
> The executive branch is empowered to establish, by way of regulation, the requirements to be met by entities bound by the obligation to register transactions, aimed at maintaining the respective entries and properly identifying customers."

The article sets forth an explicit reporting obligation for real estate agencies. The activities of the professionals mentioned above — lawyers, notaries and accountants — are not covered in their entirety, but their obligation — like that of any other natural or legal person — applies only to the extent to which they perform the activities covered in the last part of the article, i.e. when, acting on behalf of and for third parties, they engage in financial transactions or regularly administer corporate entities when the latter do not constitute a consortium or economic group. Regulations governing this provision were subsequently established by Decree No. 86/2005 of February 2005.

1.6 Pursuant to article 17 of Act No. 17,835, financial intermediation institutions must inform UIAF of any assets linked to persons identified as terrorists or as belonging to terrorist organizations in the United Nations list of associated individuals and entities or who have been declared to be terrorists by a final judgement of a national or foreign court. Article 18 stipulates that UIAF may instruct financial institutions to prevent transactions involving subjects such as the ones identified from being carried out; this is done according to the procedure established in article 6, i.e., the measure is adopted for a period of up to 72 hours, and is immediately communicated to the criminal justice authorities, who may, according to the circumstances of the case, order assets frozen without prior notice.

The legislation establishes no conditions with regard to the origin of the funds, hence the current legal framework permits the freezing of assets of legal origin which are linked to terrorist activities.

With regard to the question concerning article 6 of Act No. 17,835, when a terrorist group funds itself through criminal activities it is treated as a criminal organization as defined by the Palermo Convention, ratified by Act No. 17,861 of 28 December 2004.

1.7 According to article 17 of Act No. 17,835 of 23 September 2004, financial intermediation institutions must inform UIAF of any assets linked to persons who have been declared to be terrorists by a final judgement of a national or foreign court, even if they are not included in the United Nations list of associated individuals and entities.

1.8 As stipulated in Act No. 17,835 of 23 September 2004 and its Regulatory Decree No. 86/005 of 24 February 2005, the Central Bank of Uruguay is responsible for supervising compliance by businesses providing money transfer/remittance services with the legislation designed to prevent the offences of money-laundering and financing of terrorism. The legislation to be enacted is still under study, although it is expected to include the obligation to obtain a licence and to inform the Central Bank of Uruguay of any transactions exceeding a specified amount.

Without prejudice to the foregoing, it should be noted that the obligation to report suspicious transactions is already in force for such entities. In addition, UIAF has direct contacts with at least six different firms operating legally in Uruguay, comprising hundreds of offices open to the public throughout the country, which provide UIAF with information about their transactions and customers when so required, in fulfilment of the obligation set forth in article 5 of Act No. 17,835.

There has been no evidence to date of the existence and operation in our country of informal remittance systems, such as "hawala" or the like. Consequently, no specific provisions have been enacted to cover such activities.

1.9 See preceding reply.

1.10 (a) The main change in the regulations is contained in the aforementioned Act No. 17,835 of 23 September 2004, article 7 of which sets forth the possibility for UIAF to exchange information protected by confidentiality rules with other financial intelligence units (FIUs) outside the country, including information protected by bank secrecy regulations. Pursuant to article 5 of the Act, individuals and public agencies covered by the Act are under an obligation to provide all information requested by UIAF, and banking secrecy or confidentiality may not be invoked in response to such requests. For information, article 7 is transcribed in its entirety below:

> "*Article 7.* On the basis of the principle of reciprocity, the Central Bank of Uruguay, through the Financial Information and Analysis Unit, may exchange information relevant to the investigation of the offence of money-laundering with the counterpart authorities of other States who submit a reasoned request. They may also enter into a memorandum of understanding for this purpose.
>
> To this end, information protected by confidentiality rules may be provided only if the following requirements are met:
>
> (a) The information to be provided must be used by the requesting agency for the sole and specific purpose of analysing acts constituting money-laundering which derive from previous offences that are included in article 8 of this Act;
>
> (b) With regard to the information and documentation they receive, both the requesting agency and its officials must be subject to the same obligations of professional secrecy as the Financial Information and Analysis Unit and its officials;

(c) The information provided may be used only in criminal or administrative proceedings in the requesting State, by authorization of the criminal justice system of the requested country, which shall be granted in accordance with the rules of international legal cooperation."

(b) Similarly, Act No. 17,948 of 8 January 2006 clarified the scope of bank secrecy, the application of which is limited to passive operations.

1.11 Act No. 17,835 introduced into the legislation the special investigation technique of controlled delivery, which has already been used in a specific case. Other techniques in routine use are interception of communications, especially telephone tapping, which requires prior judicial authorization.

1.12 A witness protection programme is provided for in Decree No. 209/2000 of 25 July 2000, enacted pursuant to the provision contained in article 36 of Act No. 16,707 of 12 July 1995. This provision is generally applicable to anyone who intervenes in investigations carried out by the police or in the context of criminal proceedings, as witness or plaintiff.

1.13 Efforts are being made to establish an inter-agency coordination mechanism to develop a strategy in that area.

1.14 Under Uruguayan legislation, extradition requests are always processed through diplomatic channels.

When a treaty exists, the request is transmitted by the Ministry of Foreign Affairs to the Office of International Legal Cooperation and Mercosur (of the Ministry of Education and Culture). If no treaty exists, the request is transmitted to the Supreme Court of Justice, which refers it to the competent judge, who determines in all cases the date of execution of the extradition request.

The most recent treaties in this area are:

- Treaty on Extradition between the Eastern Republic of Uruguay and the Argentine Republic, ratified by Act No. 17,225 of 3 January 2000 and in force since 10 June 2000.
- Agreement on Extradition between the States parties of Mercosur and associated States, ratified by Act No. 17,499 of 27 May 2002. The instrument of ratification was deposited on 20 September 2002 and is currently in force with the Federative Republic of Brazil.
- Treaty on Extradition between the Eastern Republic of Uruguay and the Kingdom of Spain, ratified by Act No. 16,799 of 20 November 1996.

Article 32 of the Code of Criminal Procedure states that in cases where no treaty exists, extradition may take place only in accordance with the following rules:

(a) The offences involved must carry a minimum penalty of two-years' imprisonment;

(b) The request must be submitted by the respective Government to the executive branch, accompanied by a conviction or detention order, with the supporting documents required by the laws of the Republic, in order for the arrest to take place;

(c) A judicial declaration attesting to the validity of the extradition must be issued after the accused and the Attorney-General's office have been granted a hearing.

The general rule contained in article 13 of the Penal Code states that extradition is not admissible for political offences, for ordinary offences related to political offences, or for ordinary offences whose punishment is based on political reasons, and is also not admissible when the act in question has not been characterized as an offence under national legislation. Article 339 of the Penal Code states, "Genocide ... and acts of terrorism shall not be considered to be political offences". The Penal Code also provides that extradition may be granted even for offences not covered in treaties, provided that the treaties contain no prohibition to that effect.

Extradition of nationals is possible, provided that requirements under national legislation or in treaties, as appropriate, have been met.

In cases where the offence for which extradition is being requested carries life imprisonment or the death sentence in the requesting State, extradition shall be granted on the basis of a commitment to the effect that neither of those measures shall be applied.

Uruguay is bound by the following multilateral treaties on extradition:

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), approved through Act No. 16,579 of 7 September 1994;
- Convention on the Prevention and Punishment of the Crime of Genocide (adopted at Paris in 1948), approved through Act No. 13,482 of 7 July 1966;
- Convention on Territorial Asylum (adopted at Caracas in 1954), approved through Act No. 13,551 of 11 October 1996;
- Convention on Offences and Certain Other Acts Committed on Board Aircraft (adopted at Tokyo on 14 September 1963); Uruguay became a party on 26 January 1977;
- Convention for the Suppression of Unlawful Seizure of Aircraft ("Hague Convention", adopted on 16 December 1970); Uruguay became a party on 12 January 1977;
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (adopted at Montreal on 23 September 1971); Uruguay became a party on 12 January 1997;
- Agreement on Extradition among the member States of Mercosur (Council of the Common Market Decision No. 14/98; in force with Brazil and Paraguay), approved through Act No. 17,499 of 27 May 2002; and
- Agreement on Extradition between the member States of Mercosur, the Republic of Bolivia and the Republic of Chile (Council of the Common Market Decision No. 15/98; in force with Bolivia), approved by Act No. 17,498 of 27 May 2002.

1.15 At present, there is no advanced passenger manifest programme or automated alert system. However, there is a computerized database containing information on

the entry and exit of persons at all points. The National Migration Office also consults the Information and Intelligence Office and the International Criminal Police Organization (Interpol), before granting visas to persons of nationalities for which they are required.

1.16 The bodies concerned are currently:

- National Migration Office (Ministry of the Interior);
- Customs Office (Ministry of the Economy and Finance);
- Coastguard (Ministry of Defence); and
- Border Control Department (Ministry of Defence).

These bodies ensure ongoing coordination through the Committee for Border Control Facilitation and maintain regular contact with other relevant bodies (such as the aforementioned Information and Intelligence Office, Interpol and the Department for the Suppression of Illegal Drug Trafficking).

In addition, after a preliminary study, the Customs Office submitted to the World Customs Organization (WCO) a declaration of interest regarding initiation of the implementation process for the Framework of Standards to Secure and Facilitate Global Trade.

1.17 Implementation-related problems have been encountered with respect to the monitoring of 100 per cent of hold baggage and of cargo, mail and couriers. This problem is related to the high cost of X-ray equipment, explosives detectors and training programmes for the use thereof. Uruguay was audited by an International Civil Aviation Organization (ICAO) Universal Safety Audit Programme (USAP) team from 30 January to 8 February 2006. The proposed activities were submitted to ICAO on 22 June 2006, together with Uruguay's plan for short-, medium- and long-term corrective measures; this will allow the State and the administration to demonstrate their intent, and to make an official commitment, to ICAO with a view to the withdrawal of the objections raised made in the Universal Audit plan.

1.18 Uruguay signed the International Convention for the Suppression of Acts of Nuclear Terrorism on 16 September 2005; the process leading to its ratification is now under way.

2. Security Council resolution 1624 (2005)

2.1 With respect to offences of a terrorist nature (Act No. 17,835, art. 14), articles 147 and 148 of the Penal Code are applicable:

Article 147 (on public incitement to commit a crime): Anyone who publicly incites to commit a crime shall be subject, on the grounds of incitement alone, to 3 to 24-months' imprisonment.

Article 148 (on statements in support of acts defined as criminal offences): Anyone who makes a public statement in support of acts defined as criminal offences shall be subject to 3 to 24-months' imprisonment.

The specific legislation on income tax offences also applies.

2.2 Where the offence is established in domestic law, the corresponding measures are applicable.

2.3 Prevention and punishment of the acts in question are part of the general counter-terrorism policy, insofar as these acts include elements such as public incitement and financing, and are carried out within the framework of the treaties and conventions to which Uruguay is a party.

2.4 The Eastern Republic of Uruguay specifically establishes the principle of non-discrimination in its Constitution, article 8 of which states that "all persons are equal before the law. No distinctions among them, other than those of talent or virtue, shall be recognized". Article 7 further states that "the inhabitants of the Republic have the right to protection in the enjoyment of their lives, liberty, security, employment and property", adding that "no one may be deprived of these rights except in accordance with laws established for reasons of public interest".

Article 149 bis of the Penal Code, which establishes the offence of "incitement to hatred, scorn or violence in respect of certain persons", was added through Act No. 16,048 of 16 June 1989.

Furthermore, Uruguay is a signatory to the International Covenant on Civil and Political Rights (1966), approved through Act No. 13,670 of 1 June 1968, and to the American Convention on Human Rights (Pact of San José, Costa Rica, adopted on 19 December 1966), approved through Act No. 15,737 of 8 March 1985, which prohibit all forms of discrimination.

It should be noted that among the treaties ratified by the State of Uruguay are the following:

- International Convention on the Elimination of All Forms of Racial Discrimination (adopted on 21 December 1965), approved through Act No. 13,670 of 1 July 1968;
- International Convention against *Apartheid* in Sports (Uruguay became a party on 28 May 1986), approved through Act No. 15,982 of 11 September 1987; and
- International Labour Organization (ILO) Convention No. 111 concerning Discrimination in respect of Employment and Occupation (agreed on 4 June 1958), approved through Act No. 16,063 of 6 October 1989.

In observance of, and in compliance with, the principles, rights and obligations emanating from the aforementioned conventions, constitutional provisions and laws, Uruguay is taking ongoing action to avoid all forms of discrimination by strengthening the existence of an egalitarian, homogeneous society where the principles of non-discrimination and a sense of equality are deeply rooted in the great majority of its members.

Also relevant is the recently adopted Act No. 17,930 of 19 December 2005 (art. 229, para. 1 (k) (F)), which requires the Human Rights Directorate to "carry out activities with a view to the elimination of all forms of discrimination on grounds of ethnicity, race, gender, religion, sexual orientation, differences in abilities, age or physical appearance".

2.5 With respect to the prevention and punishment of acts of terrorism, Uruguay is a State party to various relevant international treaties, conventions and agreements, including:

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (adopted at New York on 14 December 1973), approved through Decree-Law No. 14,742 of 20 December 1977 and ratified on 13 June 1978;
- International Convention against the Taking of Hostages (adopted at New York on 17 December 1979), approved through Act No. 17,585 of 18 November 2002 and ratified on 4 March 2003);
- International Convention for the Suppression of Terrorist Bombings (adopted at New York in December 1997), approved through Act No. 17,410 of 29 October 2001 and ratified on 10 November 2001;
- International Convention for the Suppression of the Financing of Terrorism (adopted at New York on 9 December 1999), approved through Act No. 17,704 of 27 October 2003 and ratified on 8 January 2004;
- Convention on Offences and Certain Other Acts Committed on Board Aircraft (signed at Tokyo on 14 September 1963), approved through Act No. Decree-Law No. 14,436 of 7 October 1975 and ratified on 26 January 1977;
- Convention for the Suppression of Unlawful Seizure of Aircraft (signed at the Hague on 16 December 1970), approved by Decree-Law No. 14,436 on 7 October 1975 and ratified on 12 January 1977;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed at Montreal on 23 September 1971), approved by Decree-Law No. 14,436 on 7 October 1975 and ratified on 12 January 1977;
- Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (signed at Montreal on 24 February 1988), approved through Act No. 16,891 of 12 December 1997 and ratified on 3 December 1998;
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (signed at Montreal on 1 March 1991), approved through Act No. 17,329 of 9 May 2001 and ratified on 14 June 2001;
- Convention on the Physical Protection of Nuclear Material (signed at Vienna in March 1980), approved through Act No. 17,680 of 1 August 2003 and ratified on 24 October 2003;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (done at Rome on 10 March 1988), approved through Act No. 17,341 of 25 May 2001 and ratified on 10 August 2001;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (done at Rome on 10 March 1988), approved through Act No. 17,341 of 25 May 2001 and ratified on 10 August 2001;
- Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance (concluded at Washington, D.C., on 2 February 1971), approved

through Decree-Law No. 14,728 of 28 November 1977 and ratified on 17 March 1978; and

- Inter-American Convention Against Terrorism (adopted at Bridgetown on 3 June 2002), approved by the Senate on 16 May 2006 and currently before the House of Representatives.

With respect to domestic (national) law, there is a specific body of legislation that is summarized in Act No. 17,835 of 23 September 2004, which regulates the system for the prevention and control of money-laundering and the financing of terrorism.

With a view to preventing acts of extremism and intolerance, particularly in the areas of education and culture, Uruguay has adopted Act No. 14,068 of 12 July 1972, entitled the Security and Public Order Act.

2.6 Uruguay has ratified many extremely important international human rights instruments such as those mentioned in section 2.4 above. In addition, the recently adopted Act No. 17,930 of 19 December 2005 (art. 229, paras. A-H) established the Human Rights Directorate within the Ministry of Education and Culture; it is responsible for a broad range of substantive tasks involving the promotion, protection and effective enforcement of human rights.

3. Assistance and guidance

Uruguay agrees with the assistance needs identified in this section. However, in the light of the points raised in sections 1.15 to 1.18 above, please consider the possibility of special support in the area of border control: equipment (including scanners), training and information technology.